S.B. CIVIL REVISION PETITION NO.308/2004

Mohammed Nasir vs. Sumati Chand Mehta.

Date : 8.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. BM Bhojak, for the petitioner.
Mr. VL Thanvi, for the respondent.

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Heard learned counsel for the parties.

This revision petition has been filed against the order dated 26.7.2004 by which the review application of the petitioner/plaintiff was dismissed by the trial court by which the petitioner sought review of the order dated 12.2.2004. By the order dated 12.2.2004, the trial court rejected the petitioner's application for seeking permission to sue as an indigent person. By the same order, the trial court granted 15 days' time to the plaintiff to submit court fees.

It appears from the facts of the case that the order dated 12.2.2004 was not challenged by filing appeal. Now the petitioner has challenged the order dated 26.7.2004 by which the review application was dismissed. To find out whether it is a genuine case of interference in supervisory jurisdiction of this Court, when the facts were enquired, learned counsel for the petitioner submits that the petitioner presented the suit but no schedule of the

properties was annexed with the plaint or with the application filed under Order 33 Rules 1, 2 and 3 CPC. Since in the matter of review, the scope is very limited, therefore, it is also examined whether the court below committed any error of law to the extent of vitiating the order dated 26.7.2004. The trial court observed that the judicial discretion has been exercised by the trial court and the application of the plaintiff for seeking permission to sue as an indigent person was rejected and no case is made out for review of the order.

Apparently, there is no error in the order dated 26.7.2004 because the trial court considered the statement of the petitioner which was recorded by the trial court itself and thereafter, observed that in case, the petitioner had income of Rs.2,000/- per month only, he could not have got the material of huge amount on credit basis. In view of the above, there exists reason for rejection of the application and if that reason was not legal reason, then the petitioner could have challenged the order dated 12.2.2004 by filing appeal but no ground was made out for review of the order.

Apart from the above, in view of the admitted fact that the plaint and the application under Order 33 CPC were submitted without complying with the requirements of Rule 2 of Order 33 CPC and in violation of which, Rule 5 of Order 33 CPC mandates that the Court shall reject the application where it is not framed and presented in the manner

prescribed by the Rules 2 and 3 of Order 33 CPC, an additional ground was taken note of as the fact is not in dispute.

In view of the above, I do not find any merit in the revision petition. However, since the revision petition has been dismissed today, therefore, further opportunity is granted to the petitioner to pay the court fees now which may be paid within a period of 30 days from today.

(PRAKASH TATIA), J.

S.Phophaliya